
In the United States
Circuit Court of Appeals
For the Ninth Circuit. 5

In the Matter of

JENNIE R. BUCKLEY,

Bankrupt.

BAKERSFIELD ABSTRACT COMPANY,
a corporation,

Appellant,

vs.

JENNIE R. BUCKLEY,

Appellee,

and

WILLIAM H. CLENDENEN,

Appellant,

vs.

JENNIE R. BUCKLEY,

Appellee.

Transcript of Record

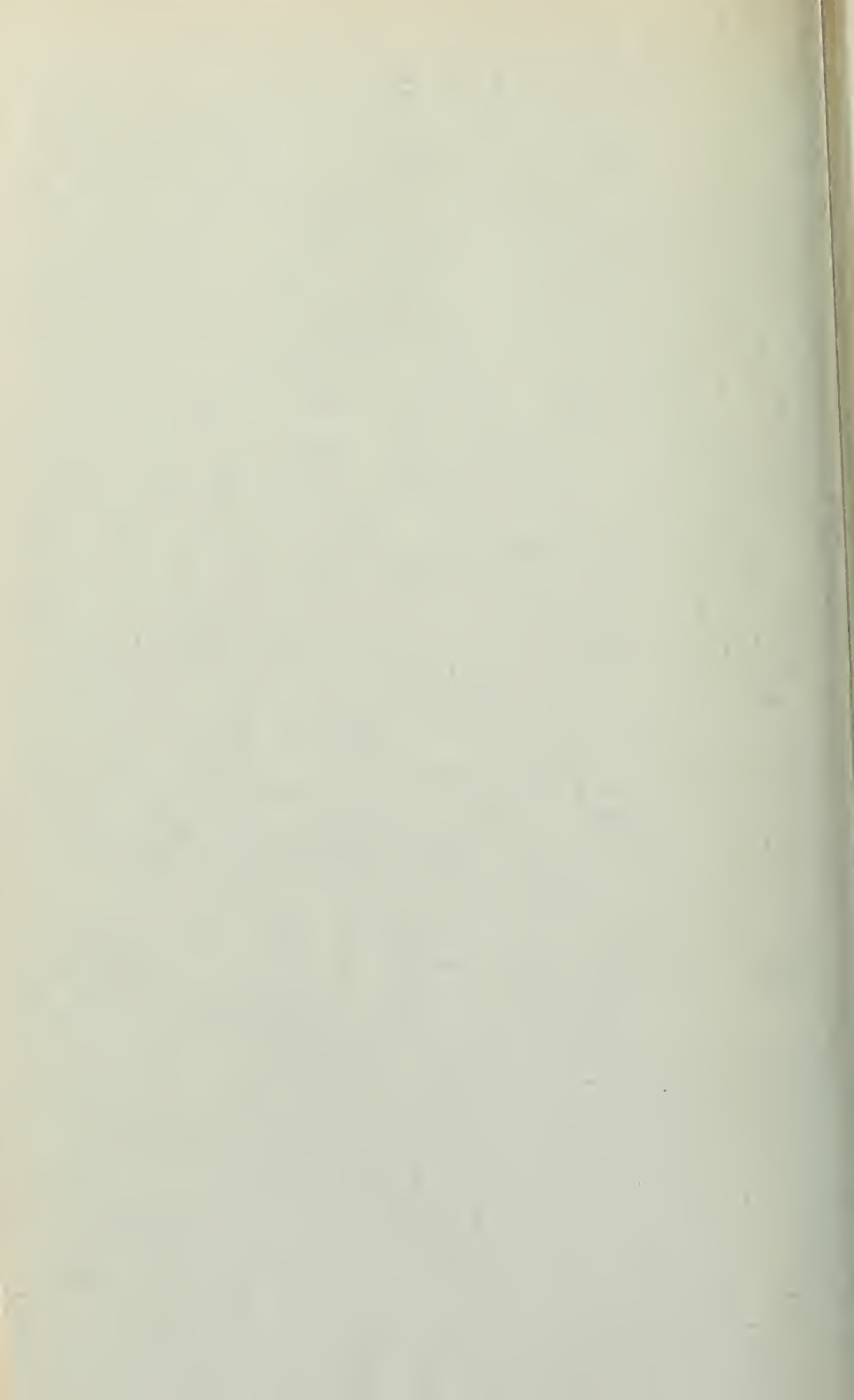
Upon Appeal from the District Court of the United States for the
Southern District of California, Northern Division.

FILED

1938

PAUL P. O'BRIEN,

CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant Bakersfield Abstract Company, a corporation:

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530 West Sixth Street,
Los Angeles, California.

For Appellants William H. Clendenen and Mamie L. Clendenen:

OSBORN & BURUM, Esqs.,
ROY BURUM, Esq.,
Haberfelde Building,
Bakersfield, California.

For Appellee Jennie R. Buckley, Bankrupt:

WILLIAM R. BERGMAN, Esq.,
WM. S. MARKS, Esq.,
Morgan Building,
Bakersfield, California.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

— —

IN THE MATTER OF)

JENNIE R. BUCKLEY,)

No. 8857

Bankrupt.)

CITATION

-----)

UNITED STATES OF AMERICA SS

TO: JENNIE R. BUCKLEY

YOU ARE HEREBY cited and admonished to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, to be held in the City of San Francisco, in the State of California, on the 13th day of July, A. D. 1938, pursuant to a petition for the allowance of an appeal filed in the Clerk's Office of the Circuit Court of Appeals of the United States, for the Ninth Circuit, in that certain bankruptcy proceeding, wherein you are the bankrupt, and you are hereby ordered and directed to show cause, if any there be, why the said petition for the allowance of said appeal in said petition mentioned should not be granted and speedy justice should not be done to the parties in that behalf.

WITNESS, The Honorable CURTIS D. WILBUR Senior United States Circuit Court Judge, for the Ninth Circuit, this 13th day of June, A. D. 1938 and of the Independence of the United States, the One Hundred and Sixty-second

(Signed) CURTIS D. WILBUR

Senior United States Circuit Court Judge for the Ninth Circuit Court of Appeals.

[Endorsed]: Filed Jul. 2, 1938 at 10 A. M. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

In the Matter of)
) No. 8857
JENNIE R. BUCKLEY,)
) CITATION
Bankrupt.)

UNITED STATES OF AMERICA, SS:

TO JENNIE R. BUCKLEY, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 13th day of July, A. D. 1938, pursuant to a petition for the allowance of an appeal filed in the Clerk's Office of the Circuit Court of Appeals of the United States, for the Ninth Circuit, in that certain bankruptcy proceeding, and wherein you are the bankrupt, and you are hereby ordered and directed to show cause, if any there be, why the said petition for the allowance of said appeal in the said petition mentioned, should not be granted, and speedy justice should not be done to the parties in that behalf.

WITNESS, THE HONORABLE CURTIS D. WILBUR, Senior United States Circuit Court Judge for the Ninth Circuit, this 13th day of June, A. D. 1938, and of the Independence of the United States, the one hundred and *thirty-eighth*.

CURTIS D. WILBUR

Senior United States Circuit Court Judge for the
Ninth Circuit.

Due service of the within citation and receipt of a copy thereof is hereby acknowledged this 20th day of June, 1938.

Wm. R. Bergman

Wm. S. Marks

Attorneys for Jennie R. Buckley, Bankrupt.

[Endorsed]: Filed Jul. 2, 1938 at 10 A. M. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
NORTHERN DIVISION

IN THE MATTER OF)
)
 JENNIE R. BUCKLEY,) No. 4616
) In Bankruptcy
 Bankrupt.)

ADJUDICATION, ORDER OF REFERENCE, AND
TEMPORARY RESTRAINING ORDER

Under Section 75-S Bankruptcy Act

At Los Angeles, in said District, on Dec. 13, 1937, before said Court in Bankruptcy, the petition of JENNIE R. BUCKLEY, debtor in the above-entitled matter, that *he* be adjudged a bankrupt under the terms and provisions of Section 75-S of the Bankruptcy Act; and within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said JENNIE R. BUCKLEY is hereby declared and adjudged a bankrupt accordingly.

It is thereupon ordered that said matter be referred to SAMUEL TAYLOR, ESQ., the Conciliation Commissioner for KERN County, to act as Referee in Bankruptcy of this Court and to take such further proceedings therein as are required by said Acts and that the said JENNIE R. BUCKLEY shall attend before said Conciliation Commissioner acting as referee, at his office in BAKERSFIELD, California, on Dec. 20, 1937, at 10 o'clock a. m.

and shall submit to such orders as may be made by said Conciliation Commissioner, acting as such Referee, or by this Court relating to said matter in bankruptcy.

And it is further ordered, adjudged and decreed that all creditors of the above named Bankrupt be and they are hereby enjoined and restrained from commencing or maintaining any judicial or official proceedings in any court, or under the direction of any official against the said bankrupt, or any of his property, and from proceeding with any sale of the bankrupt's property under the terms of any Deed of Trust, until further order of this Court.

WITNESS, The Honorable LEON R. YANKWICH,
Judge of said Court, and the seal thereof, at Los Angeles,
in said District on Dec. 13, 1937

R. S. ZIMMERMAN,

Clerk.

By M. R. Winchell

Deputy Clerk

[Endorsed]: Filed R. S. Zimmerman Clerk at 29 min.
past 4 o'clock Dec. 13, 1937 P. M. By M. R. Winchell,
Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PETITION FOR ORDER TO SHOW CAUSE
TO THE HONORABLE SAMUEL TAYLOR, CON-
CILIATION COMMISSIONER:

The petition of Jennie R. Buckley, bankrupt, respectfully represents:

1. That on the 13th day of December, 1937, your petitioner was adjudged a bankrupt under the provisions of Section 75-s of the Bankruptcy Act.

2. That this Court upon adjudging and declaring petitioner herein bankrupt made its restraining order herein, in part, ordering, adjudging and decreeing that all creditors of the petitioner be enjoined and restrained from proceeding with any sale of the bankrupt's property under the terms of any deed of trust until the further order of this Court.

3. That notwithstanding the pendency of the proceedings and the aforesaid injunction, one William H. Clendenen, a secured creditor of petitioner herein, caused the Bakersfield Abstract Company, a Corporation, to sell at public auction on the 27th day of December, 1937, the real property belonging to the petitioner herein pursuant to the terms of a deed of trust, wherein said William H. Clendenen was the beneficiary, your petitioner the trustor and said Bakersfield Abstract Company the trustee, which said deed of trust covered the ranch property of your petitioner described in her petition and schedules filed herein and hereinafter described.

4. That at said sale the said William H. Clendenen was the purchaser of said property; that said sale and the deed executed by the trustee thereunder was made and executed in violation of the restraining order made by this Court in this matter, and said sale and deed are of no force, validity or effect; that said trustee's deed is recorded in the office of the County Recorder of Kern County in Book 765, page 86, Official Records of Kern County, California, and said property is described as follows:

The fractional Southwest Quarter of Section Eighteen (18), Township Twenty-seven (27) South, Range Twenty-eight (28) East, M. D. B. & M., being 178 acres more or less, in Kern County, California.

WHEREFORE, your petitioner prays for an order of this Court requiring the said William H. Clendenen and the said Bakersfield Abstract Company, a Corporation, to be and appear before this Court at a time and place and there to show cause, if any they have, why an order of this Court should not be made herein declaring and adjudging the aforesaid sale and trustee's deed null, void and of no effect, and for any other relief consistent herein.

Dated this 8th day of January, 1938.

Jennie R. Buckley

STATE OF CALIFORNIA)
) SS.
 County of Kern)

Jennie R. Buckley, being first duly sworn, deposes and says that she is the petitioner in the above entitled matter, that she has read the foregoing petition, knows the contents thereof, and that all of the matters and allegations therein contained are true of her own knowledge except as to the matters therein stated on information and belief, and as to those matters she believes it to be true.

Jennie R. Buckley

Subscribed and sworn to before me this 8th day of January, 1938.

[Seal]

Wm. S. Marks

Notary Public in and for the County of Kern,
 State of California

[Endorsed]: Filed R. S. Zimmerman Clerk at 24 min. past 9 o'clock Mar. 21, 1938 A. M. By F. Betz Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ORDER TO SHOW CAUSE

Upon reading the petition of the bankrupt herein, and good cause appearing therefor, it is hereby ordered that William H. Clendenen and the Bakersfield Abstract Company, a Corporation, be and appear before this Court at the office of the Conciliation Commissioner for Kern County, 105 Morgan Building, Bakersfield, California, on the 15th day of January, 1938, at the hour of 10:00 o'clock A. M. or as soon thereafter as counsel can be heard, then and there to show cause, if any they have, why an order of this Court should not be made declaring and adjudging that the sale and trustee's deed mentioned in said petition be declared null, void, and of no effect.

Bakersfield, California

January 8, 1938

Samuel Taylor

Conciliation Commissioner acting as Referee
in Bankruptcy herein

[Endorsed]: Filed R. S. Zimmerman Clerk at 24 min past 9 o'clock Mar. 21, 1938 A. M. By F. Betz Deputy Clerk.

That there was given as additional security on the note secured by said deed of trust a chattel mortgage of even date, executed by said trustor to said beneficiary, which chattel mortgage was duly recorded in the office of the County Recorder of said County on December 5, 1935 in Book 608, Page 229 of said Official Records;

That pursuant to a Declaration of Default dated August 20, 1937, signed by said beneficiary and directed to said trustee, said trustee was instructed to record a Notice of Default and Election to Sell as provided for in said deed of trust based upon default in payment of installment of principal due on the 28th day of October, 1936, and default in the payment of installment of interest due April 28, 1936;

That under and by virtue of the terms of said deed of trust and under the instructions of said Declaration of Default, there was recorded by said beneficiary in the office of the County Recorder of said County on August 26, 1937, in Book 729, Page 372 of said Official Records, a Notice of Default and Election to Sell under said deed of trust;

That on August 27, 1937, there was mailed to San Joaquin Cotton Oil Company, P. O. Box 711, Bakersfield, California, and to American Fruit Growers, Inc., P. O. Box 804, Bakersfield, California, notice that a notice of default under said deed of trust was filed in the office of the County Recorder of said County on August 26, 1937;

That by registered mail, under date of August 27, 1937, there was mailed to Jennie R. Buckley, Box 121, Wasco, California, and to J. A. Buckley and Gladys Buckley, Box 121, Wasco, California, and to LeRoi Company, Inc., 810 Santa Fe Avenue, Los Angeles, California,

and to G. B. Crome and R. F. Harlow and Bakersfield Hardware Company, 2015 Chester Avenue, Bakersfield, California, notice that default had been made under the provisions of said deed of trust and note and that by reason of said default, the owner of said deed of trust and note, on the 26th day of August, 1937, caused to be recorded in the office of the County Recorder of said County, a Notice of Default and Election to Sell under the provisions of said deed of trust and had made demand upon said trustee to commence advertising said property for sale on or about the 26th day of November, 1937, and to sell the same at public auction according to law and the provisions of said deed of trust;

That on November 27, 1937, said trustee did execute a Notice of Trustee's Sale, noticing said sale for December 27, 1937 at 10:00 o'clock A. M. at the West front entrance of the Court House in the City of Bakersfield, California;

That said trustee caused Notice of Trustee's Sale to be posted on the property described in said deed of trust on the 4th day of December, 1937, and also caused a notice to be posted at the place at which said sale was to be held;

That on November 30, 1937, there was mailed to Jennie R. Buckley, Box 121, Wasco, California and to LeRoi Company, Inc., 810 Santa Fe Avenue, Los Angeles, California, and to American Fruit Growers, Inc., Box 804, Bakersfield, California, and to George W. Shearer, Habersfelde Building, Bakersfield, California, and to San Joaquin Cotton Oil Company, Box 711, Bakersfield, California, a copy of Notice of Trustee's Sale;

That also on said day there was mailed to G. B. Crome and R. F. Harlow, 2015 Chester Avenue, Bakersfield,

California, by registered mail, a copy of said Notice of Trustee's Sale;

That on all matters herein referred to as being mailed, same were placed in the United States Post Office at Bakersfield, California, with postage thereon prepaid;

That said trustee caused said Notice of Trustee's Sale to be duly advertised in the Wasco News, a newspaper of general circulation, printed and published at Wasco, California, in the Ninth Judicial Township, County of Kern, State of California, in which township the property described in said deed of trust is situated;

That said notice was published on Friday, December 3, 1937; Friday, December 10, 1937 and Friday, December 17, 1937;

That said sale was duly held and conducted as provided by the laws of the State of California and by said deed of trust on the date therein noticed; and

That said property was duly sold after all the statutes of the States of California relating to sales under deeds of trust were complied with and the terms of said deed of trust, to W. H. Clendenen and Mamie Clendenen, his wife as joint tenants, for \$20,000.00; and

That said trustee, by deed duly executed in conformity with said deed of trust, issued to said purchaser Trustee's Deed.

M. J. Davis

Subscribed and sworn to before me, this 12th day of January, 1938.

[Seal]

Verna J. Croson

Notary Public in and for the said County
and State.

[Endorsed]: Filed R. S. Zimmerman Clerk at 24 min. past 9 o'clock Mar. 21, 1938 A. M. By F. Betz Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ANSWER TO ORDER TO SHOW CAUSE AND TO
PETITION FOR ORDER TO SHOW CAUSE

Comes now Bakersfield Abstract Company, a corporation, and, for response to the order to show cause in the above entitled matter why an order of this court should not be made declaring and adjudging that the sale under the trustee's deed mentioned in the petition of the bankrupt be declared null, void and of no effect, and for answer to the petition of the bankrupt on file in the above entitled matter, alleges as follows:

I

Answering Paragraph I of the petition of the bankrupt, your respondent admits that the petitioner was adjudged a bankrupt under the provisions of Section 75(s) of the Bankrupt Act on the 13th day of December, 1937.

II

Answering Paragraph II of the petition for order to show cause, respondent denies that the Conciliation Commissioner, acting as referee of bankruptcy in the above entitled matter, made a restraining order, the effect of which was to adjudge and decree that respondent be enjoined and restrained from proceeding with the sale of the property described in the deed of trust executed by the bankrupt.

III

Answering Paragraph III of the petition for order to show cause, respondent alleges that William H. Clendenen caused respondent to sell at public auction on the 27th day of December, 1937, the real property described in said deed of trust pursuant to the terms thereof.

Further answering Paragraph III, respondent alleges that said William H. Clendenen was the beneficiary named in said deed of trust, that respondent was the trustee named in said deed of trust, and that Jennie R. Buckley, petitioner, executed said deed of trust.

IV

Answering Paragraph IV of the petition for order to show cause, respondent alleges that William H. Clendenen was the purchaser of said property at the trustee's sale held pursuant to the terms of said deed of trust.

Further answering Paragraph IV, respondent denies that the deed executed by it as trustee under said deed of trust was made and executed in violation of any restraining order made by the Conciliation Commissioner in acting as referee in bankruptcy in the above entitled matter; denies that the trustee's sale and trustee's deed are of no force, validity or effect; admits that said trustee's deed is recorded in the office of the County Recorder of Kern County in Book 765, page 86, Official Records of Kern County, California; denies that said property is described as:

The fractional Southwest Quarter of Section Eighteen (18), Township Twenty-seven (27) South, Range Twenty-eight (28) East M. D. B. & M., being 178 acres more or less, in Kern County, California;

and alleges that said property is described as:

All of fractional Southwest quarter (SW $\frac{1}{4}$) of Section (18), Township Twenty-seven (27) South, Range Twenty-five (25) East, M. D. B. M.; according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor-General.

AND FOR A FURTHER AND SEPARATE RESPONSE TO THE ORDER TO SHOW CAUSE AND PETITION FOR ORDER TO SHOW CAUSE, RESPONDENT ALLEGES:

That said petition for order to show cause does not contain allegations of fact sufficient to state grounds and reasons why said trustee's deed should be declared of no force, validity or effect.

AND FOR A SECOND, FURTHER AND SEPARATE RESPONSE TO THE ORDER TO SHOW CAUSE AND PETITION FOR ORDER TO SHOW CAUSE, RESPONDENT ALLEGES:

I

That it has duly and regularly taken each and every step required by the statutes of the State of California and by the terms of said deed of trust executed October 28, 1935, by Jennie R. Buckley and leading up to and resulting in the sale of the property described in said deed of trust and the issuance by respondent of its trustee's deed therein provided for.

II

That respondent files herewith in response to the order to show cause an affidavit signed and sworn to by M. J. Davis, President of respondent, which affidavit is referred to and made a part hereof as if set out herein.

III

That said affidavit contains a full and complete recital of all of the acts of respondent as trustee under the above mentioned deed of trust.

AND FOR A THIRD, FURTHER AND SEPARATE RESPONSE TO SAID ORDER TO SHOW CAUSE AND PETITION FOR ORDER TO SHOW CAUSE, RESPONDENT ALLEGES:

That at no time mentioned in said petition for order to show cause, or prior or subsequent thereto, has there been served upon respondent any order, judgment or decree purporting to restrain or stay respondent from exercising its power as trustee under that certain deed of trust executed on the 28th day of October, 1935, by Jennie R. Buckley.

WHEREFORE, respondent prays that petitioner be denied any order as prayed for in said petition for an order to show cause, that said petition be dismissed, and that respondent have any other relief consistent with the matters herein alleged.

(Signed) Wm. H. B. Haymond
Wm. H. B. Haymond
Attorney for Bakersfield Abstract Company

Verified.

[Endorsed]: Filed R. S. Zimmerman Clerk at 24 min. past 9 o'clock Mar. 21, 1938 A. M. By F. Betz Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

REPORTER'S TRANSCRIPT ON HEARING OF
ORDER TO SHOW CAUSE

Counsel appearing:

For the *petitioner*, Jennie R. Buckley: W. R. Bergman and William S. Marks;

For the Bakersfield Abstract Company: William H. Haymond;

For W. H. Clendenen and Mamie L. Clendenen: Messrs. Osborn & Burum.

Bakersfield, California, January 15, 1938.

This case coming on regularly at this time, for hearing, before Samuel Taylor, Esq., Conciliation Commissioner, acting as Referee in Bankruptcy, herein, the following proceedings were had, to-wit:

THE COURT: Let the record show the parties present in the matter of the Order to Show Cause in the matter of Jennie R. Buckley, a bankrupt. Proceed gentlemen. You are all familiar with the matter before the Court at this time, upon the Order to Show Cause, why the Trustee's sale, held on the 27th day of December, 1937, pursuant to the terms of the deed of trust upon the ranch property belonging to the bankrupt; Petition having been made to the Court that this sale was had in violation of the Injunction or Restraining Order heretofore issued by this Court, on the 13th day of December, 1937, requiring the Creditors of the Bankrupt to desist from the sale of any property belonging to the Bankrupt after the filing of the amended petition under 75 S of the Bankruptcy Act, which was held in contravention of the Order made aforesaid, or the Restraining Order or the injunction made.

MR. MARKS: Is the Court making an opening statement?

THE COURT: No, the order is to the Creditor to show cause why an Order of this Court should not be made declaring and adjudging that the sale and the trust deed mentioned in the Petition should not be declared null and void and of no effect. That is the requirement of the Creditor at this time, is to show cause.

MR. HAYMOND: The respondent, Bakersfield Abstract Co., now files the affidavit of Mr. Davis, which is in response to the Order to Show Cause, and which has been served upon the Petitioner. Also at this time the Respondent, Bakersfield Abstract Company, files a copy of its Notice of Motion to Dismiss the Petition, stating the grounds, a copy of which has also been served upon the Petitioner. On behalf of Respondent, Bakersfield Abstract Company, first I want to state it was never the intention of the Respondent to violate any order of this Court. The affidavit will disclose the ignorance of Mr. Davis and of the other officers of the Corporation that any Injunction or Restraining Order had been issued. I think the affidavit is positive in its averment that no order was ever served upon the Bakersfield Abstract Company.

MR. OSBORN: May it be stipulated that we join in the Motion to Dismiss and in the other proceedings with the Bakersfield Abstract Company, and that it be considered that the written document be filed the same as that of the Bakersfield Abstract Company.

THE COURT: The petitioner having been served with Notice of Motion to Dismiss the Petition for Order to Show Cause this morning, it would appear to me that they would be entitled to some time to meet that issue un-

less they want to waive that time and pass upon it right now.

MR. HAYMOND: I realize ordinarily an Equity Case is handled by an action either in the State or Federal Court, and all parties have some time to get ready for it. I made the trip up here this morning through rain of cats and dogs, and if Petitioner will not be taken too much by surprise I would like to present one case which I think Your Honor is already familiar with. However, if Your Honor please, if it will be unfair to the Petitioner to have the presentation made this morning I will make another trip up here.

MR. BERGMAN: Are these your points and authorities which you expect to rely on?

MR. HAYMOND: That is correct.

MR. BERGMAN: I believe at this time we can answer these authorities, you can proceed with your argument.

MR. OSBORN: May it be stipulated that we may be considered on behalf of W. H. Clendenen and Mamie Clendenen, to have joined in that Notice of Motion to Dismiss.

MR. MARKS: I think there is no objection to that, but I do feel as I understand it, Mr. Clendenen is the principal here, and these others are the subordinates, and this being done directly, that Mr. Clendenen did know about this, and I would not want it to appear that he is playing second fiddle only. I think Mr. Clendenen is the big chief instead of the Bakersfield Abstract Company. If we stipulate that they are to be considered as secondary parties.

MR. OSBORN: All of those matters will all be raised in the case.

MR. BERGMAN: I don't believe a stipulation of that kind should be entered into as your position is different. If you were in the same position, Mr. Clendenen is a creditor, and subject to his proceedings, and the Bakersfield Abstract Company is not in the same position as you are, and I don't believe that a stipulation such as you suggest is a practical matter, and will work under the petitions, motions and affidivit.

MR. OSBORN: The purpose of the matter was, if Your Honor please, that we desire to have a written Notice of Motion to Dismiss in the same form as this motion is in, and the Court will hear the evidence. That is just a matter in a sense of determining the issues. The Court will hear the evidence and determine the matter from the position of the various parties. If they are in position to show that any proceedings Mr. Clendenen has been involved in, that the Bakersfield Abstract had nothing to do with, this is a matter for the Court to determine. It has nothing to do with the filing of the Notice of Motion.

MR. MARKS: I have not looked over the Notice of Motion, but if Mr. Bergman will stipulate, I will stipulate too. I have no objections to your filing such a Notice of Motion.

MR. BERGMAN: I believe at this time it would be better, I would suggest to the Court at this time if Mr. Clendenen wishes to make the same Motion he may do so.

MR. OSBORN: That is the purpose of it.

MR. BERGMAN: However I believe to keep the record straight, you should file your own Motion separately.

MR. OSBORN: We will do that then. We can go ahead with the proceedings and file it at a later date.

MR. BERGMAN: Of course at this time, you being present, if you wish to make an oral Motion and argue it at this time, otherwise we will have to continue it to another date, and it having been set at this time I would like to go ahead with it.

THE COURT: I don't believe the rules of the District Court permit oral motions to be made. That is my opinion, that the motion must be made in writing.

MR. OSBORN: We can substitute a written motion if the Court cares to proceed now, at a later date.

THE COURT: I think that is perfectly all right if you adopt—if you make a request that you may adopt this motion as *you* motion, I think maybe that will be all right.

MR. OSBORN: You folks would not object to that would you?

MR. MARKS: Yes, I object to that after reading the notice. This does not seem to fit into your particular case.

THE COURT: Both affidivits are very much the same, setting forth the execution of the trust deed and the notice and sale thereunder. That is embodied in both affidivits. The Motion is to dismiss the petition for Order to Show Cause on the grounds that the Bakersfield Abstract Company received no notice of any proceedings under Subsection S 75, nor any stay of the Order. That is the Motion. That is your Motion.

MR. HAYMOND: Yes, Your Honor.

THE COURT: And the secured creditor, W. H. Clendenen, through his counsel desires to adopt the Motion of

the Bakersfield Abstract Company as his motion, is that correct?

MR. OSBORN: Yes, that is, W. H. Clendenen and Mamie Clendenen, his wife.

THE COURT: And you will later file a written Motion?

MR. OSBORN: If you so desire. If we adopt that one maybe it will not be necessary.

THE COURT: I think that is all right, to adopt this one without making a written one.

MR. MARKS: I have not had time to go over all of this, and I have no objection to Mr. Haymond making a showing, but I would not like to be bound by the answers we make at this time, without a little chance to look this over.

MR. BERGMAN: If I understand counsel correctly, you are relying upon the authority as submitted there, in the case of Hepburg and the case of Hart vs. Kirkpatrick.

MR. HAYMOND: And the Bankruptcy Act. This is a very simple point, and if, after the oral presentation, you gentlemen wish to furnish the Court with authorities, I agree of course to have a short memorandum of authorities, and I will be glad to handle the thing the same way. That is perfectly agreeable. However, I did feel the points involved were very simple, and it would be more satisfactory from the standpoint of the trustee, if, while I was here, I could present them orally.

THE COURT: You may proceed.

MR. OSBORN: I think it is now understood that we can each adopt that.

THE COURT: I will permit you to adopt that as your motion.

MR. MARKS: Let the record show we object to it being adopted as the issues are different as we see it.

MR. HAYMOND: The Respondent, Bakersfield Abstract Company takes the position, Your Honor, that the sale here involved was a non-judicial sale, as distinguished from a sale pursuant to judicial procedure. That the sale under a power given in the contract as is the case with deeds of trust, is different from sales made by judicial officers pursuant to judgment or order, and that this sale which the Respondent has made, being a non-judicial sale was not within the scope of Your Honors general order restraining proceedings, and that the position of the Respondent in that regard is sustained by the case of Hart vs. Kirkpatrick.

THE COURT: I didn't issue the restraining order, it was issued by this Court. I didn't issue it. It was issued by this Court. The Judge that actually signed the Restraining Order is Judge Yankowich. Did you know that upon the filing of proceedings the last few months or the latter part of the year, at the time the Order of Reference is made and the Order of Adjudication—first the Order of Adjudication and the Order of the Conciliator, and in the same order there is embodied a Restraining Order—are you familiar with that?

MR. HAYMOND: No, Your Honor.

THE COURT: Whether any Creditor gets a copy of that or not the Order is binding and I can't see how a sale had after an Order of Court is issued could be effective.

MR. HAYMOND: Now, I came here preparing to present to Your Honor the differences in an estate in respect to the rights of creditors, where proceedings are

had under Subsection O and the difference between proceedings under that Subsection and proceedings which take place after adjudication under Subsection S. It now appears that an Order to Show Cause has been issued to this Respondent, on the theory that an order made at the time of adjudication is effective as to strangers to the proceedings, without any service whatsoever; that the world is by such an order compelled to desist and refrain from performing any acts, or execute any power, which has been theretofore vested in this case in the trustee, without ever having been served on that person any copy of the injunction or Restraining Order. May I ask Your Honor if that is the situation?

THE COURT: I would take it all creditors of the bankrupt are bound by the proceedings and the restraining order the Court issues, the Bakersfield Abstract Company, trustee, is an agent of the creditor, and after an Order of Court all proceedings binding upon the principal, I feel it binds the agent likewise.

MR. HAYMOND: I would agree with you, if the trustee was an agent. However, I believe the trustee is the principal and acts as such, holding the title for the purpose of trust, and acts as a principal and not as an agent, or attorney in fact for the creditor. I have not a case at hand at the moment, but I believe Your Honor will agree that the authorities in California universally agree on the point that the legal title is conveyed in trust with power to sell, and that the beneficiary takes no title or interest in the land itself. If the beneficiary takes no title or interest in the land, then the trustee in selling the land cannot act as agent for the beneficiary. He can only sell that title which he, the trustee, has, and he deals at arm's length with the beneficiary requiring the beneficiary

to issue demand and notices, and at all times treating him as a beneficiary of the trust rather than a principal. In case, however, that this were a mortgage with power of sale, the situation would be entirely different. However, with the title in the trustee, the respondent in this case is compelled to act indifferently as between the parties, impartially, having due regard for the rights of the beneficiary of a trust. If he performs a wrongful act, even if he is prohibited from doing so by the beneficiary, the act is nevertheless valid, unless it transcends the powers granted in the instrument itself.

Here we have a conveyance duly acknowledged and recorded, power set forth of the trustee, the beneficiary, holder of the promissory note who might transfer that note by assignment, thus conferring upon his assignee the same beneficial interest that he had, whereas if this were an agency, certainly the consent of the agent to act for the new principal would at least be required.

THE COURT: Well Mr. Haymond, I take this position—that when a bankrupt files under Section 75 he is protected by the provision of Subsection O. That is a statutory stay, statutory prohibition against all creditors of the bankrupt, of the debtor, to take his property or sue him, or proceed with any suit, whether pending, or to start a suit. It is against everyone, notice or not. It is true that the law requires notice by publication, and also personal service by mail, which the creditors had in this matter. Mr. Clendenen and his attorney were here at the first meeting of creditors under Section 75, from A to R, and at that time I made a statement they were unable to obtain a consent of the largest creditor, Mr. Clendenen, to a written proposal for composition and extension. I then informed the debtor and her counsel, that there was noth-

ing else she could do, but to amend her petition under Section 75, and ask for the relief provided by Section 75, Subsection S, and then I made the statement I said "For the benefit of these creditors of the debtor they are prohibited from proceeding with any sale or any suit against the bankrupt while this proceeding is pending" and they were bound for all intents and purposes at that time. Until such time as the proceedings were filed to dismiss the bankrupt, and her property was protected by the Federal Court. Now some time later, within a reasonable time, the debtor filed an amended petition under Section 75, and asked to be adjudicated a bankrupt, and that matter was referred to me, to act as Referee in Bankruptcy therein, and a Restraining Order was issued. Again, within a reasonable time, notice went out to the creditors. Whether that notice was prior to the sale or subsequent, is immaterial. The creditor who caused this sale to be had, Mr. Clendenen, knew that these proceedings were pending. He was here personally.

MR. HAYMOND: I am not appearing for Mr. Clendenen, Your Honor.

THE COURT: I know you are not, but Mr. Clendenen is hiding behind the skirts of the Bakersfield Abstract Company. If the Bakersfield Abstract Company can sustain its position and have this Order to Show Cause set aside, he is sitting on top of the world. In other words he wants this sale perfected. But it appears to me however, that the Bakersfield Abstract Company is merely acting in behalf of the secured creditor, and should have been informed by Mr. Clendenen not to go ahead with the sale. He went ahead and allowed the Bakersfield Abstract Company to go ahead with the sale on the 27th of December, if he had told them that there was a bankrupt

proceedings pending they would not have gone ahead with the sale, because I know the Bakersfield Abstract Company never passes on an order where farming property is involved in Kern County, unless they get a statement from me that there is no proceedings pending under Section 75 or Section 75 S, and they insist upon that, and they are very careful about getting that every time. Now I know the Bakersfield Abstract Company would not issue a certificate of title on this, but they have issued a trustee's sale. They will not unless they get a statement from me that these proceedings are not pending. So it is apparently an attempt to put this thing through. I am satisfied that the attorneys knew of these proceedings. That the secured creditor knew of these proceedings, but in as much as they had not been personally served with an injunction, the stand is that there is no restraint upon these sales. I know this, because you cite here the Kirkpatrick case, and that holds if there is no restraint they can go ahead with the sale. But in this there was a restraint issued on the 13th day of December, when the sale was had on the 27th, and the Bakersfield Abstract Company, the trustee, is bound by that restraining order, whether they received notice or not, and so is the secured creditor. This is the position I take.

MR. HAYMOND: The position of the Respondent, Bakersfield Abstract Company, is, if the Order to Show Cause as against the Bakersfield Abstract Company has no merits, the Respondent Bakersfield Abstract Company is up here for punishment for contempt.

THE COURT: There is no contempt proceedings. They would not be subject to contempt proceedings since they received no notice, but nevertheless, the sale itself—we are not harassing the secured creditor or the trustee.

The proceeding here is to set aside that sale as being void. It is void because it is made in controvention of the mandate of the Court.

MR. HAYMOND: If the trustee had a title, and that title was disposed of at the time the property was sold. If the trustee acted within the powers granted to it under the deed of trust and sold that property and made its Trustee's Deed it has no title now. The Bakersfield Abstract Company has no title. If it has no title then it is submitted that this is a matter as between the person who has the title and the person whose wants it returned, as between the trustor and the Respondent, Bakersfield Abstract Company.

THE COURT: I cannot agree with you. I take it that if the proceedings are void by which the trustee attempted to dispose of the title, then the trustee's sale as to title after the proceedings are void, and all it requires is an order of court setting aside that sale and setting aside the deed, declaring the deed and sale void, so the trustee will still have the title.

MR. HAYMOND: Then Your Honor distinguishes between the terms void and voidable, and applies the term void in this case. If the conclusion is that the Bakersfield Abstract Company still has the title if the proceedings are voidable at the instance of the aggrieved party, then the title is in the purchaser, subject to the trust. I am sorry that we didn't come prepared to cite to Your Honor the cases that cover the acts of the Trustee where the proper notice is not given under the deed of trust. In such cases of course the trustee, inadvertently, or otherwise, proceeds to transfer the legal title to someone else. The authorities hold that the legal title is trans-

ferred, but the property is still subject to the trust, by reason of failure to comply with the provisions of the contract, but the trustee, being competent, the instrument of conveyance being continuous, a legal title does pass. That is true that a power of sale is personal to the trustee, and does not pass to the grantee, but the legal title to the property passes subject to the trust. In this case where a party to the contract at a time that no service has been made upon it, of the Restraining Order or temporary Injunction, exercises powers which have been granted to it without any knowledge of any disability to perform any act which could be considered *tortuous*, or *felonious*, the only position that the Respondent can take is that the title passes, and that if it were advised to do so it could file a disclaimer in these proceedings as having no title remaining in it.

THE COURT: I don't think the abstract company or the Trustee can take that position. It is cited into Court because it was and is a Trustee, and holding title to this property in trust for William H. Clendenen, and as far as the Trustee is concerned it has not shown cause why the sale held pursuant to the terms of the deed of trust, the deed issued by it to William H. Clendenen after sale had, should not be declared null and void and of no effect.

MR. HAYMOND: I was arguing on the motion to dismiss, Your Honor. I had an answer in response to the Order to Show Cause which is ratified.

THE COURT: I have not seen that. Of course they are somewhat wrapped around one another, the Motion to Dismiss is tantamount to the Answer to the Order to Show Cause. Of course you set up in the motion your reasons why the Order to Show Cause should be dismissed. It says you didn't get any notice, but I take it—

MR. HAYMOND: I take it then, Your Honor is denying the Motion to Dismiss. In that case the Answer to the Order to Show Cause having been filed, and the issues thus raised, would Your Honor be interested in authorities supporting the Respondent's position. I would be glad to prepare them and submit them before Your Honor renders a decision on the Order to Show Cause.

THE COURT: Yes, I want to give you every opportunity to present this matter in the fullest possible manner, because it is not a trifling thing. It is a very important thing, and we don't know where it will end, but I want to be right, of course, and I have not read your Answer yet. I do take it that the Motion is not in order to dismiss the petition on these grounds stated in the Motion.

MR. HAYMOND: There is some duplication—

THE COURT: (Interrupting) It seems to me it is elementary that a Restraining Order binds everybody concerned not to do the act prohibited, but if they receive no direct notice of the Restraining Order, then they cannot be held for contempt, but nevertheless I feel satisfied that it is a binding order, because—the idea of serving everybody with a Restraining Order—it is in the Order itself, requiring everybody to be served, but the intent of the Act is to tie the hands of every creditor and let the law take its course, and let the Court through its officers, administer the estate of the debtor, or bankrupt, for the sole purpose of rehabilitation, and if they are going to trim and skin him and take everything he has right and left, and ignore the Court's mandate, that would not be the intent of the Act. I feel that the farmer should have some opportunity at least to make an effort to try to rehabilitate himself, and if he cannot do it after the Court has given him the opportunity, that is a different

thing. According to Court technicalities that would defeat the intent of this Act. Say a trustee had full power to go ahead and sell the property, that he is not bound by the Order. He is acting for the Creditor, and it is my opinion that the Creditor is bound, and of course the Trustee is not concerned, even if the sale is set aside. He still holds the title and will hold it until he is finally allowed to sell it without any restraint. He has not lost anything, he has nothing to defend, in my opinion, because personally the trustee has not any axe to grind here at all.

MR. HAYMOND: None whatsoever, Your Honor. The point which is of extreme interest to the Trustee however, is whether or not after four months opportunity in which to obtain and serve a Restraining Order, a trustor by a document of this escrow—at least it is only disclosed by the files of the District Court, can create the equivalent of another Subsection O. If a Restraining Order were as universal a thing as the Statute itself, then I could see where everyone would look for Restraining Orders, but here we have Subsection O, which says, proceedings are stayed and after Subsection O we have Subsection S where there is no stay.

THE COURT: But the proceedings are pending and my position is this, there is no gap between the proceedings from A to R and S. It is one continuous proceeding. The debtor is permitted to amend his petition if he cannot obtain a settlement with his Creditors.

MR. HAYMOND: Certainly.

THE COURT: To be adjudicated a bankrupt and obtain his 3 years stay. That is the purpose of the amendment, and if it was not the same proceedings it could not be an amendment. The fact that it is an amended *pei-*

tion indicates that the same proceeding is pending and nevertheless the decision which is binding of course on all of us in this District, that is Hart vs. Kirkpatrick, I feel that O does govern right through until the proceeding is finally dismissed. The Creditor knew these proceedings were pending, and the records were in my office in Bakersfield available to anyone interested, and he could have ascertained whether there was a Restraining Order or not. He didn't go to the trouble of ascertaining. Ignorance of the law excuses no one. The fact that you don't know that is the law, but if you violate the law you are bound by it. As far as the proceedings against—

MR. HAYMOND: (Interrupting) To everyone that is a party to that proceedings.

THE COURT: And the Trustee is acting for the Creditor. There is no question about that in my mind.

MR. HAYMOND: Your Honor just stated that you believed Subsection 75 governed right straight through the proceedings.

THE COURT: The only rule we have is in Hart vs. Kirkpatrick and that is against your contention. I still think that O is governing and binding. The Supreme Court may hold with me and reverse the case of Hart vs. Kirkpatrick. Subsection S was held by numerous Circuit Courts of the United States as unconstitutional, yet the Supreme Court in a well considered opinion held it was constitutional, so you see the Circuit Courts can be wrong, and in Hart vs. Kirkpatrick if it was intended to restrain, the Court would restrain. In that case there was no restraint at all. That was a procedure prior to that decision. Adjudication would be made and the papers sent to the Conciliatory Commissioner, and no Restraining

Order, and after that decision, the District Court then incorporated in its Order of Adjudication, and Order of Reference, the Restraining Order, as a precaution to avoid this very thing that we are battling with now. And I grant that if they had all gotten a copy of the Restraining Order, there is nothing in the Act that requires the Conciliation Commissioner to serve the Creditors with the Restraining Order. He is required to send them notice of the meeting by publication and through the mail, and they could, to be doubly sure, they could have phoned me and asked me if there was any Restraining Order issued, and I would have told them yes, and they could have desisted, but they saw fit to ignore the proceedings, to say the least, and never made a Motion to Dismiss the proceedings, and they took it for granted I suppose, that the Bankrupt or the Debtor would file an Amended Petition, and notwithstanding these proceedings were pending, they didn't take the trouble to ascertain whether they were pending or not, assuming I suppose, they were, but did not ascertain if they were dismissed. They went ahead with the sale as scheduled. They could have easily postponed the sale, but they went right ahead, and of course I see it is the desire of the Secured Creditor to enforce what he considered his rights.

MR. HAYMOND: Your Honor has been very kind to explain the position of the Court, and counsel for the Respondent appreciates that. Not to impose on the Court, I would appreciate hearing your voice as to whether or not you distinguish between sales completed where the bankruptcy occurs after Notice of Default, and sale completed while proceedings have been instituted prior to the Notice of Default. In this case, the Notice of Default was of record long before the adjudication.

THE COURT: Section O governs that.

MR. BERGMAN: May I interrupt. Respondent has relied on Hart vs. Kirkpatrick, and in this particular case the Court sees fit to follow the ruling of Hart vs. Kirkpatrick, and the suggestion of the Court in Hart vs. Kirkpatrick is as follows: "Section 75-S provides a direct and orderly means by which the Court can present any such conflict." And that is exactly what the Court has done in this case. The District Courts have seen fit to follow this.

MR. HAYMOND: But they didn't serve it.

MR. BERGMAN: They had issued the stay, and the stay has been sustained by the Court.

MR. HAYMOND: I believe the Court is familiar with the position the Respondent takes, and I appreciate the time the Court has given to me.

MR. BURUM: On behalf of the Respondent Clendenen just to show his good faith in this deal, because the Court has been most fair in expressions of the Court, I want to say it has not been the purpose of the Respondent Clendenen at any time here to violate any of the Court's Orders. I want that understood. There has been some little misunderstanding about the instructions of the Court at the first meeting of Creditors. I was here representing Mr. Clendenen, at which time a proposal was made by the debtor, Mrs. Buckley, and it was rejected by Mr. Clendenen. The Court I believe at that time said that they could offer any other proposal varying the terms or could amend their petition, and the matter was left indefinite. I don't recall any definite time in which any additional proposals would be made, or amendment filed, and the session closed. I will say frankly, I didn't hear

and I would say in my presence I don't recall anything being said to the Creditor, Mr. Clendenen about his being restrained in any manner. Of course he had no authority over the sale. His request to the Abstract Company having been made back in August. His Notice of Default and Instruction for them to proceed under the terms of the deed of trust as Trustee, then it was not until last Saturday that personally I knew anything about the Restraining Order issued by the Court under the amended petition, and I saw that in the file here last Saturday and Mr. Clendenen—that was the first notice he had had of any Stay or Restraining Order, so I want the Court to know that his position is that.

THE COURT: I am satisfied that the Creditor and the Trustee relied on the decision in the case of Hart vs. Kirkpatrick, that in the absence of an express Restraining Order there was nothing in the Act that prevented the sale, but since the Restraining Order had been issued it was notwithstanding binding on the Creditor and Trustee, and of course whatever they did in contravention of that Order is at their own risk.

MR. HAYMOND: There are not very many authorities on the subject Your Honor. I believe I could refer to 7 or 8 cases altogether on that subject as to the right to proceed under the trust deed. I will try to suit my convenience to the convenience of other counsel in getting that memorandum to Your Honor.

THE COURT: You are familiar with the second paragraph of O—

MR. HAYMOND: It has always been so held.

THE COURT: Then in the last paragraph it says "All such property." After describing the different prop-

erties of the Bankrupt and the different forms of action, "All such property shall be under the sole jurisdiction of the Court in Bankruptcy and subject to the payment of debtor farmer's Creditors as provided for in section 75 of this Act." Now if there is a subsection in 75 that prohibits the Creditors from taking the property of the farmer that section goes clear over into S, from A to S. It doesn't stop at R, because S is the last subsection of 75, and O governs all through the proceedings until it is finally dismissed either under 80 R or S.

MR. HAYMOND: I think Your Honor is wrong. I think it was the intention of the Court to find out whether or not he could work out an extension proposal with his Creditors, and if it was found the proposal failed, or there was a disposition made of the proposal, then according to the way I read the cases, the clock mandate is removed from the property and a secured creditor can go forward unless the Court says "Don't do it", which it does with a Restraining Order properly made and served. If Your Honor's position that O governs all the way through is correct—

THE COURT: (Interrupting) They do that to stop any further controversy, they issue a Restraining Order. It settles a mooted question, and it settles a controversial point, but I maintain that is the case all the way through, and to try to find out what the Court intended when we have a plain interpretation of the Act—The Court intended to stop interference with the farmer's property all the way through Section 75.

MR. MARKS: Even if it doesn't go through. I think the supplemental order signed by the Court would back up the authority and carry it on just the same.

THE COURT: This Answer sets up practically the same as the Affidavit, doesn't it?

MR. HAYMOND: It is just for the purpose of showing the issues here raised in response to the Order.

THE COURT: The facts set up in this Answer are the same as the facts in the Affidavit?

MR. HAYMOND: Yes.

MR. OSBORN: At this time we would like to hear some evidence as to any attempt which might have been made on the part of the Debtor to make any payment whatsoever.

THE COURT: No, that is not within the issues. I am prepared to rule on this matter now. I don't know of any other authorities.

THE COURT: If it is the law that the Creditor or Trustee has charge of the Debtor's property and does not receive a copy of the Injunction itself. If that is the law, then these people are all in the clear, but that is not the position I feel they are in; I take it—

MR. MARKS: (Interrupting) I think Mr. Clendenen is the principal but the others are agents.

THE COURT: If that is the case Mr. Clendenen did nothing about that sale because they were selling it for him. The Order of Court will be that the sale held by the Trustee pursuant to the terms of the Deed of Trust on the 27th of December, 1937, be declared null and void and of no effect, and that the Trust Deed issued by the Trustee named in said Deed of Trust, to-wit, the Bakersfield Abstract Company, a Corporation, be declared null and void and of no effect, and is by this Order set aside.

[TITLE OF DISTRICT COURT AND CAUSE.]

CERTIFICATE OF CONCILIATION
COMMISSIONER

I HEREBY CERTIFY that the question for review is whether or not the secured creditor and his agent the trustee under a deed of trust are bound by a restraining order issued out of this Court in this matter restraining all creditors from proceeding with any sale of property belonging to the bankrupt.

The petitioners proceeded with a scheduled trustee's sale and sold the ranch property of the bankrupt at public auction on the 27th day of December, 1937, to the secured creditor the beneficiary for the amount owing to him by the bankrupt notwithstanding knowledge on the part of the secured creditor of the pending proceedings, he having attended the first meeting of creditors and rejected the written proposal of the debtor for a composition or extension; at which time the debtor was informed that she could amend her petition and it was understood by all those present that the debtor would amend.

Thereafter and prior to the sale the debtor did amend her petition and was duly adjudicated a bankrupt the matter being referred to your Commissioner and a restraining order issued on December 13, 1937. Thereafter in violation of the order of this Court said sale was had without the permission of the Court.

I FURTHER CERTIFY that the reporter's transcript and excerpts from the reporter's transcript of the proceedings together with the copies of the judgment and decree made in this matter are correct.

Bakersfield, California. March 19, 1938.

Samuel Taylor
Conciliation Commissioner Kern Co.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 24 min. past 9 o'clock Mar. 21, 1938 A. M. By F. Betz, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PETITION OF
 BAKERSFIELD ABSTRACT COMPANY,
 a corporation,

FOR REVIEW OF REFEREE'S ORDER

TO: The Honorable Samuel Taylor,
 Referee in Bankruptcy.

Your petitioner, Bakersfield Abstract Company, a corporation, respectfully shows:

I

That in the due course of the proceedings of the above entitled bankruptcy on the 24th day of January, 1938, a judgment and decree was duly made and entered herein, a copy of which follows, to wit:

“IN THE DISTRICT COURT OF THE UNITED
 STATES FOR THE SOUTHERN
 DISTRICT OF CALIFORNIA
 NORTHERN DIVISION

In the Matter of)	
	)	No. 4616
JENNIE R. BUCKLEY,)	
	)	JUDGMENT AND
Bankrupt.	)	DECREE

The petition of Jennie R. Buckley, the bankrupt herein, for an Order to Show Cause why the trustee's sale pursuant to the terms of a Deed of Trust, held on the 27th day of December, 1937, whereby the real property belonging to the bankrupt, consisting of 178 acres of farming land, should not be held null and void and of no

force or effect, coming on regularly for hearing on the 18th day of January, 1938, William H. Clendenen, a secured creditor and beneficiary under said Deed of Trust, appearing in person, and represented by his attorneys, Messrs. Osborn & Burum, and the Bakersfield Abstract Company, a corporation, the trustee named in the Deed of Trust, being represented by *Raymond* Haymond, Esq., its attorney, and Jennie R. Buckley, bankrupt herein, appearing in person and represented by her attorneys, Messrs. W. R. Bergman and William S. Marks, and the matter having been argued, and thereafter submitted upon said oral argument and affidavits of the trustee and beneficiary, and the motion to dismiss said Order to Show Cause interposed by said trustee, said William H. Clendenen having been allowed by the Court to adopt the motion of the trustee to dismiss said proceedings as his motion also, and upon the affidavit of said William H. Clendenen, and the Court being fully advised in the premises, finds that said William H. Clendenen and the Bakersfield Abstract Company, a corporation, did not show cause why the said trustee's sale and the trustee's deed made and executed on the 27th day of December, 1937, and recorded on the 29th day of December, 1937, in Book 765 at page 86 of Official Records in the office of the County Recorder of Kern County, California, should not be declared null and void and of no force or effect;

NOW, THEREFORE, IT IS HEREBY ORDERED,
ADJUDGED AND DECREED:

That the purported sale by the Bakersfield Abstract Company, a corporation, as trustee to William H. Clendenen, and the subsequent trustee's deed to William H. Clendenen executed on the 27th day of December, 1937, to the following described real property:

The fractional Southwest Quarter (SW $\frac{1}{4}$) of Section Eighteen (18), Township Twenty-seven (27) South, Range Twenty-eight (28) East, M. D. B. & M., being 178 acres more or less, in the County of Kern, State of California, said Trustee's Deed being recorded in Book 765, page 86, of Records of Kern County, which purported sale was held under that certain Deed of Trust executed by the bankrupt, Jennie R. Buckley, as trustor to the Bakersfield Abstract Company, a corporation, as trustee, and William H. Clendenen as the beneficiary, which deed of trust was recorded in Book 583 at page 29 in the Official Records in the office of the County Recorder of Kern County, California, which sale and deed were executed after the Court had acquired jurisdiction of the bankrupt and her property and had made its order (in part) on December 13, 1937, restraining any creditor from proceeding with any sale of the bankrupt's property under the terms of any Deed of Trust until the further order of this Court. That said purported sale and proceedings and the deed executed by the Bakersfield Abstract Company as trustee to William H. Clendenen, the purchaser thereunder, is

null, void and of no force or effect, and is herewith annulled, vacated and set aside.

Dated this 24th day of January, 1938.

SAMUEL TAYLOR

Conciliation Commissioner acting as Referee
in Bankruptcy"

II

That thereafter and on the 26th day of January, 1938, notice of the filing and entry of said judgment and decree was given your petitioner.

III

That said judgment and decree was and is erroneous in that:

(a) Said judgment and decree is based upon a record showing that petitioner did not have notice of the application for, or of the making of, an order restraining and enjoining any sale of the bankrupt's property under the terms of any deed of trust.

(b) Said judgment and decree is based upon a record which does not contain any return of service upon petitioner of an order restraining and enjoining any sale of the bankrupt's property under the terms of any deed of trust, and upon a record which does not contain any evidence of any kind that petitioner had knowledge of said order.

(c) The files and records in the proceedings contain an answer by petitioner to the order to show cause, in which answer petitioner makes a verified denial that

service was made upon it of any order restraining and enjoining any sale of the bankrupt's property under the terms of any deed of trust, and the further verified denial that petitioner had any notice of any kind of the making of said order.

(d) Said judgment and decree is based upon a conclusion of the court that "a restraining order binds everybody concerned not to do the act prohibited even if notice of such order is not received," and a further conclusion of the court that "petitioner is bound by the restraining order issued December 13, 1937, whether it (petitioner herein) received notice or not."

(e) Said judgment and decree is based upon a conclusion of the court that petitioner as trustee under the deed of trust is an agent of the beneficiary, known in these proceedings as the creditor Wm. H. Clendenen, and that petitioner was bound by the provisions of any order served upon or directed to Wm. H. Clendenen.

(f) Said judgment and decree is based upon the order made December 13, 1937, restraining and enjoining any sale of the bankrupt's property under the terms of any deed of trust. That the portion of said order of December 13, 1937, providing that

"all creditors of the above named Bankrupt be and they are hereby enjoined and restrained from commencing or maintaining any judicial or official proceedings in any court, or under the direction of any official against the said bankrupt, or any of his property, and from proceeding with any sale of the bankrupt's property under the

terms of any Deed of Trust, until further order of this Court"

is contrary to law and of no force and effect.

IV

That said judgment and decree herein set forth and the conclusions of the court as herein set forth are contrary to law.

WHEREFORE, your petitioner prays that said judgment and decree made on the 24th day of January, 1938, be reviewed as provided by the Bankruptcy Act of 1898, and the amendments thereto, and by General Order XXVII.

Dated this 5th day of March, 1938.

[Seal]

BAKERSFIELD ABSTRACT
COMPANY

By M. J. Davis
President

By H. B. Kelly
Secretary

Petitioner

Wm. H. B. Haymond
Wm. H. B. Haymond,
Attorney for Petitioner,
530 West Sixth Street,
Los Angeles, California.

STATE OF CALIFORNIA)
) SS.
 COUNTY OF KERN)

M. J. DAVIS, being by me first duly sworn, deposes and says:

That he is the President of Bakersfield Abstract Company, a corporation, the petitioner in the above entitled proceeding; that he has read the foregoing petition and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

M. J. Davis

Subscribed and sworn to before me this 5th day of March, 1938.

[Seal]

Constance Campbell
 Notary Public in and for said County
 and State.

[Endorsed]: Filed R. S. Zimmerman Clerk at 24 min. past 9 o'clock Mar. 21, 1938 A. M. By F. Betz, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PETITION OF WILLIAM H. CLENDENEN FOR A
REVIEW OF REFEREE'S ORDER

Petitioner is a creditor of the above named bankrupt and as such was a party to the following certain proceedings in said bankruptcy pending before Samuel Taylor as the Referee in Bankruptcy in charge thereof, to-wit: A hearing upon an order to show cause why a sale under a trust deed made and executed by bankrupt should not be set aside and declared null and void.

Upon the hearing thereof a final order was made by the said Referee as follows, to-wit:

“IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
NORTHERN DIVISION

In the matter of)	
	)	N. 4616
JENNIE R. BUCKLEY,)	
	)	JUDGMENT AND
Bankrupt.	)	DECREE
— — — — —)	

The petition of Jennie R. Buckley, the bankrupt herein, for an Order to Show Cause why the trustee's sale pursuant to the terms of a Deed of Trust, held on the 27th day of December, 1937, whereby the real property belonging to the bankrupt, consisting of 178 acres of

farming land, should not be held null and void and of no force or effect, coming on regularly for hearing on the 18th day of January, 1938, William H. Clendenen, a secured creditor and beneficiary under said Deed of Trust, appearing in person, and represented by his attorneys, Messrs. Osborn & Burum, and the Bakersfield Abstract Company, a corporation, the trustee named in the Deed of Trust, being represented by *Raymond* Haymond, Esq., its attorney, and Jennie R. Buckley, bankrupt herein, appearing in person and represented by her attorneys, Messrs. W. R. Bergman and William S. Marks, and the matter having been argued, and thereafter submitted upon said oral argument and affidavits of the trustee and beneficiary, and the motion to dismiss said Order to Show Cause interposed by said trustee, said William H. Clendenen having been allowed by the Court to adopt the motion of the trustee to dismiss said proceedings as his motion also, and upon the affidavit of said William H. Clendenen, and the Court being fully advised in the premises, finds that said William H. Clendenen and the Bakersfield Abstract Company, a corporation, did not show cause why the said trustee's sale and the trustee's deed made and executed on the 27th day of December, 1937, and recorded on the 29th day of December, 1937, in Book 765 at page 86 of Official Records in the office of the County Recorder of Kern County, California, should not be declared null and void and of no force or effect;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the purported sale by the Bakersfield Abstract Company, a corporation, as trustee to William H. Clendenen, and the subsequent trustee's deed to William H. Clendenen executed on the 27th day of December, 1937, to the following described real property:

The fractional Southwest Quarter (SW $\frac{1}{4}$) of Section Eighteen (18), Township Twenty-seven (27) South, Range Twenty-eight (28) East, M. D. B. & M., being 178 acres more or less, in the County of Kern, State of California, said Trustee's Deed being recorded in Book 765, page 86, of Records of Kern County, which purported sale was held under that certain Deed of Trust executed by the bankrupt, Jennie R. Buckley, as trustor to the Bakersfield Abstract Company, a corporation, as trustee, and William H. Clendenen as the beneficiary, which Deed of Trust was recorded in Book 583 at page 29 in the Official Records in the office of the County Recorder of Kern County, California, which sale and deed were executed after the Court had acquired jurisdiction of the bankrupt and her property and had made its order (in part) on December 13, 1937, restraining any creditor from proceeding with any sale of the bankrupt's property under the terms of any Deed of Trust until the further order of this Court. That said purported sale and proceedings and the deed executed by the Bakersfield Abstract Company as trustee to William H. Clendenen, the purchaser thereunder, is

null, void and of no force or effect, and is herewith annulled, vacated and set aside.

Dated this 24th day of January, 1938.

SAMUEL TAYLOR
Conciliation Commissioner acting as Referee
in Bankruptcy"

to which Order petitioner duly excepted.

Said Order is erroneous in this:

- (1) Irregularities in the proceedings before the Referee;
- (2) Insufficiency of the evidence to justify the decision;
- (3) That the decision is against law;
- (4) Errors in law occurring at the trial and excepted to by the party making the application.

WHEREFORE, petitioner prays that said Order be reviewed and reversed, and that he be restored to all things he has lost by reason of said error.

William H. Clendenen
Petitioner on Review

Osborn & Burum
Attorneys for Petitioner

STATE OF CALIFORNIA,

COUNTY OF KERN SS

WILLIAM H. CLENDENEN, being duly sworn, deposes and says: That he is the petitioner named in the foregoing petition; that he has read said petition and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters, he believes it to be true.

William H. Clendenen

Subscribed and sworn to before me this 3rd day of February, 1938.

[Seal]

Walter Osborn

Notary Public in and for the County of Kern,
State of California.

SERVICE of a copy of the foregoing PETITION OF WILLIAM H. CLENDENEN FOR A REVIEW OF REFEREE'S ORDER is hereby admitted this 3rd day of February, 1938.

W. R. Bergman

and Wm. S. Marks

[Endorsed]: Filed Feb. 3, 1938 Samuel Taylor, U. S. Conciliation Commissioner Bakersfield, California
Filed R. S. Zimmerman Clerk at 24 min. past 9 o'clock
Mar 21, 1938 A. M. By F. Betz Deputy Clerk.

At a stated term, to-wit: The April Term, A. D. 1938, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 6th day of May in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

The Honorable: Paul J. McCormick District Judge.

In the Matter of)	
)	
JENNIE R. BUCKLEY,	)	No. 416-Bkey
)	
Bankrupt.)	

Upon consideration of the entire record transmitted by the conciliation commissioner, upon the petition of Bakersfield Abstract Company, a corporation, and upon the petition of William H. Clendenen, the order of the conciliation commissioner acting as referee in bankruptcy, dated January 24, 1938, is confirmed. Exceptions allowed Bakersfield Abstract Company, a corporation, and William H. Clendenen, respectively, to the aforesaid order of the referee and to the aforesaid order of this court.

In amplification of the foregoing order, it is clear that the requirements established by the Circuit Court of Appeals in *Hardt v. Kirkpatrick* 91 F. (2d) 875, have been fulfilled in this proceeding. The restraining order issued December 13, 1937, is the specific means and "expedient" which the Circuit Court of Appeals directs shall be invoked so as to preserve the power of the bankruptcy court and preserve all rights and benefits under Section 75(s) of the National Bankruptcy Act.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

	)	No. 8857
In the Matter of	)	PETITION TO CIR-
	)	CUIT COURT OF AP-
JENNIE R. BUCKLEY,	)	PEALS FOR LEAVE
	)	TO APPEAL UNDER
Bankrupt.	)	BANKRUPTCY ACT

TO THE HONORABLE JUDGES OF THE UNITED
STATES CIRCUIT COURT OF APPEALS,
FOR THE NINTH CIRCUIT:

Your petitioner, Bakersfield Abstract Company, a corporation, conceiving itself aggrieved by the order of the United States District Court, for the Southern District of California, Northern Division, made by the Honorable Paul J. McCormick, one of the judges thereof, on the 6th day of May, 1938, denying the petition for review filed by your petitioner and affirming the order made by Samuel Taylor, Esq., Referee in charge of said bankruptcy, in which order said Referee had set aside a trustee's deed, executed by petitioner after sale under the provisions of a deed of trust, files this its petition, addressed to the discretion of this Honorable Court, for leave to appeal a matter of law from said order of the District Court.

Your petitioner refers to the Assignment of Errors made by it simultaneously with this petition, setting forth the errors made by the court below and giving the grounds for this appeal, and makes said Assignment of Errors a part hereof.

Your petitioner further states that it is the trustee under a deed of trust executed by the bankrupt; that

the bankrupt first filed her petition as a debtor under Section 75 of the Bankruptcy Act (11 USCA Sec. 203), for composition or extension of time to pay her debts, and subsequently thereto was adjudicated a bankrupt; that the order of adjudication contained an order, which in part enjoined all creditors from proceeding with any sale of the bankrupt's property under the terms of any deed of trust, until further order of the court making such order; that your petitioner had no notice of such restraining order, and such order was unknown to your petitioner at the time of the exercise by it of its power granted by the terms and provisions of said deed of trust; that subsequent to the exercise of such powers, your petitioner was directed by an order of said Referee, to show cause why its trustee's deed should not be set aside and its sale under said trust deed be declared null and void; that, as hereinabove set forth, said trustee's deed was set aside and said trustee's sale declared null and void.

Your petitioner thereupon filed its petition for review of said order and said Referee duly filed his certificate, containing a summary of the evidence and a statement of the questions involved. Said petition for review came on to be heard before the Honorable Paul J. McCormick, Judge of the United States District Court, who upon consideration thereof affirmed said order and entered the following order, to wit:

"Upon consideration of the entire record transmitted by the conciliation commissioner, upon the petition of Bakersfield Abstract Company, a corporation, and upon the petition of William H. Clendenen, the order of the conciliation commissioner acting as referee in bankruptcy, dated January 24, 1938, is confirmed. Exceptions allowed Bakersfield Abstract Company, a corporation, and Wil-

liam H. Clendenen, respectively, to the aforesaid order of the referee and to the aforesaid order of this court.

“In amplification of the foregoing order, it is clear that the requirements established by the Circuit Court of Appeals in *Hardt v. Kirkpatrick*, 91 F. (2d) 875, have been fulfilled in this proceeding. The restraining order issued December 13, 1937, is the specific means and “expedient” which the Circuit Court of Appeals directs shall be invoked so as to preserve the power of the bankruptcy court and preserve all rights and benefits under Section 75(s) of the National Bankruptcy Act.

“DATED this May 6, 1938.”

Said order of the District Court is erroneous in matter of law, for the reason that by said order it was in effect found and held that notice or knowledge of the making or existence of a restraining order by your petitioner was unnecessary and that any action taken, expressly enjoined by such an order, may be set aside and declared a nullity as being a violation of such order, and that such an unpublished, undeclared and unknown order is a notice or a caveat, even as to persons interested or having a claim of lien or title in and to property affected by said proceedings.

Said order is further erroneous in matter of law, in that it was in effect found and held that the order enjoining all creditors of the bankrupt from proceeding with any sale of the bankrupt's property under the terms of any deed of trust until further order of the court, was a valid restraining order and that certain statutory

requirements had been met prior to the making of such an order, to wit; the appraisal of the debtor's property and the setting aside of the debtor's unencumbered exemptions, whereas, in truth and in fact the records and files in said matter in the office of the clerk of said District Court do not disclose that said conditions were met at the time said restraining order was issued.

WHEREFORE, your petitioner prays that it may be allowed in the discretion of this Honorable Court to appeal a matter of law herein; that the prayer of this petition be granted and a citation be issued to Jennie R. Buckley, bankrupt, commanding her to appear before the United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

DATED: June 1, 1938.

BAKERSFIELD ABSTRACT COMPANY

BY M. J. DAVIS

President

Petitioner

Wm. H. B. Haymond

Wm. H. B. Haymond

Attorney for Petitioner.

[TITLE OF CIRCUIT COURT OF APPEALS AND CAUSE.]

No. 8857

ASSIGNMENT OF ERRORS

Now comes Bakersfield Abstract Company, a corporation, a trustee named in a deed of trust executed by the above bankrupt, and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in said matter from the order made and entered in the United States District Court, Southern District of California, Northern Division, on the 6th day of May, 1938. In and for said assignment of errors, said trustee says:

I

The Court erred in finding and holding in effect that the restraining order contained in the order of adjudication was notice or a caveat to all persons, or to interested persons, or to persons having existing titles or claims in the property of the bankrupt.

II

The Court erred in finding and holding in effect that an interested person, or persons, having an existing title or claims in the property of the bankrupt, is concluded by and subject to restraining and injunctive orders contained in an order of adjudication, where no actual or constructive notice of such restraining order was given to or had by appellant prior to the doing of acts especially enjoined.

III

The Court erred in finding and holding in effect that the powers of appellant as an active trustee under a deed of trust were stayed by an order made and existing and unknown to appellant.

IV

The Court erred in finding and holding in effect that acts of the appellant may be set aside for violation of the injunctive provisions of a restraining order which was never brought to the attention of appellant, and with which it is not charged with constructive notice, and where the bankrupt's petition for the issuance of an order to show cause does not allege that appellant had knowledge of the restraining order, and where appellant's verified and sworn answer showing absence of service of such order is undisputed.

V

The Court erred in finding and holding in effect that the appellant as trustee under a deed of trust executed by the bankrupt was chargeable with knowledge had by a creditor beneficiary having no power of direction over the trustee, and having no rights other than the right to participate in the proceeds of sale under such deed of trust.

VI

The Court erred in finding and holding in effect that the injunction contained in the order of adjudication was made in conformity with Section 75 (s) of the Bank-

ruptcy Act (11 USCA Sec. 203) wherein it is provided that the following conditions must be met as a prerequisite to the granting of such stay, to wit, the appraisal of the debtor's property and the setting aside of the debtor's unencumbered exemptions, and where the conditions were not met and the record shows no compliance with such conditions.

WHEREFORE, Bakersfield Abstract Company, a corporation, prays that the Circuit Court of Appeals reverse the minute order herein and that the United States District Court for the Southern District of California, Northern Division, be ordered to enter a judgment or decree reversing the decision of said lower court herein.

Wm. H. B. Haymond

Wm. H. B. Haymond

Attorney for Bakersfield Abstract Company,
a corporation.

(Endorsed) Assignment of Errors. Filed June 6, 1938. Paul P. O'Brien, Clerk.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 26 min. past 1 o'clock Jun. 15, 1938 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF CIRCUIT COURT OF APPEALS AND CAUSE.]

No. 8857

PETITION TO CIRCUIT COURT OF APPEALS
FOR LEAVE TO APPEAL UNDER
BANKRUPTCY ACT

TO THE HONORABLE JUDGES OF THE UNITED
STATES CIRCUIT COURT OF APPEALS, FOR
THE NINTH CIRCUIT:

Your petitioner, WILLIAM H. CLENDENEN, conceiving himself aggrieved by the order of the United States District Court, for the Southern District of California, Northern Division, made by the Honorable Paul J. McCormick, one of the judges thereof, on the 6th day of May, 1938, denying the petition for review filed by your petitioner and affirming the order made by Samuel Taylor, Esq., Referee in charge of said bankruptcy, in which order said Referee had set aside a trustee's deed, executed by petitioner after sale under the provisions of a deed of trust, files this his petition, addressed to the discretion of this Honorable Court, for leave to appeal a matter of law from said order of the District Court.

Your petitioner refers to the Assignment of Errors made by it simultaneously with this petition, setting forth the errors made by the court below and giving the grounds for this appeal, and makes said Assignment of Errors a part hereof.

Your petitioner further states that he is the Beneficiary under a deed of trust executed by the bankrupt; that the bankrupt first filed her petition as a debtor under Section 75 of the Bankruptcy Act (11 USCA Sec. 203), for composition or extension of time to pay her debts,

and subsequently thereto was adjudicated a bankrupt; that the order of adjudication contained an order, which in part enjoined all creditors from proceeding with any sale of the bankrupt's property under the terms of any deed of trust, until further order of the court making such order; that your petitioner had no notice of such restraining order, and such order was unknown to your petitioner at the time of the sale of said property by the BAKERSFIELD ABSTRACT COMPANY, Trustee under said deed of trust; that your petitioner, as a creditor, subsequent to the sale of said property by the Bakersfield Abstract Company, was directed by an order of said Referee to show cause why the trustee's deed to your petitioner should not be set aside and the sale under said trust deed be declared null and void; that, as hereinabove set forth, said trustee's deed was set aside and said trustee's sale declared null and void.

Your petitioner thereupon filed his petition for review of said order and said Referee duly filed his certificate, containing a summary of the evidence and a statement of the questions involved. Said petition for review came on to be heard before the Honorable Paul J. McCormick, Judge of the United States District Court, who upon consideration thereof affirmed said order and entered the following order, to wit:

“Upon consideration of the entire record transmitted by the conciliation commissioner, upon the petition of Bakersfield Abstract Company, a corporation, and upon the petition of William H. Clendenen, the order of the conciliation commissioner acting as referee in bankruptcy, dated January 24, 1938, is confirmed. Exceptions allowed Bakersfield Abstract Company, a corporation, and William H. Clendenen, respectively, to the aforesaid order of the referee and to the aforesaid order of this court.

“In amplification of the foregoing order, it is clear that the requirements established by the Circuit Court of Appeals in *Hardt v. Kirkpatrick*, 91 F. (2d) 875, have been fulfilled in this proceeding. The restraining order issued December 13, 1937, is the specific means and “expedient” which the Circuit Court of Appeals directs shall be invoked so as to preserve the power of the bankruptcy court and preserve all rights and benefits under Section 75-S of the National Bankruptcy Act.

Dated this May 6, 1938.”

Said order of the District Court is erroneous in matter of law in that it was in effect found and held that the order enjoining all creditors of the bankrupt from proceeding with any sale of the bankrupt's property under the terms of any deed of trust until further order of the court, was a valid restraining order and that certain statutory requirements had been met prior to the making of such an order, to-wit: the appraisal of the debtor's property and the setting aside of the debtor's unencumbered exemptions, whereas, in truth and in fact the records and files in said matter in the office of the clerk of said District Court do not disclose that said conditions were met at the time said restraining order was issued.

WHEREFORE, your petitioner prays that he may be allowed in the discretion of this Honorable Court to appeal a matter of law herein; that the prayer of this petition be granted and a citation be issued to Jennie R. Buckley, Bankrupt, commanding her to appear before the United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly au-

thenticated, may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: June 1st, 1938.

William H. Clendenen
Petitioner

OSBORN AND BURUM,
By R. Y. Burum
Attorneys for Petitioner

STATE OF CALIFORNIA,
COUNTY OF KERN SS

WILLIAM H. CLENDENEN, being first duly sworn, deposes and says: That he is the petitioner in the above-entitled action; that he has read the foregoing Petition to the Circuit Court of Appeals for leave to appeal under Bankruptcy Act, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

William H. Clendenen

Subscribed and sworn to before me this 2nd day of June, 1938.

[Seal]

R. Y. Burum

Notary Public in and for the County of Kern,
State of California.

(Endorsed) Petition for appeal. Filed June 6, 1938
Paul P. O'Brien, Clerk.

[Endorsed]: Filed Jul. 2, 1938 at 10 A. M. R. S.
Zimmerman, Clerk, By Edmund L. Smith, Deputy Clerk.

[TITLE OF CIRCUIT COURT OF APPEALS AND CAUSE.]

No. 8857

ASSIGNMENT OF ERRORS

Now comes WILLIAM H. CLENDENEN, Beneficiary named in a deed of trust executed by the above bankrupt, and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in said matter from the order made and entered in the United States District Court, Southern District of California, Northern Division, on the 6th day of May, 1938. In and for said assignment of errors, said Beneficiary says:

I.

The Court erred in finding and holding in effect that the restraining order contained in the order of adjudication was notice or a caveat to all persons, or to interested persons, or to persons having existing titles or claims in the property of the bankrupt.

II.

The Court erred in finding and holding in effect that an interested person, or persons, having an existing title or claims in the property of the bankrupt, is concluded by and subject to restraining and injunctive orders contained in an order of adjudication, where no actual or constructive notice of such restraining order was given to or had by appellant prior to the doing of acts especially enjoined.

III.

The Court erred in finding and holding in effect that the appellant, WILLIAM H. CLENDENEN, was bound by the injunctive provisions of a restraining order which

was never brought to the attention of appellant, and with which he is not charged with constructive notice, and where the bankrupt's petition for the issuance of an order to show cause does not allege that appellant had knowledge of the restraining order, and where appellant's verified and sworn answer showing absence of service of such order is undisputed.

IV.

The Court erred in finding and holding in effect that the injunction contained in the order of adjudication was made in conformity with Section 75-S of the Bankruptcy Act (11 USCA Sec. 203) wherein it is provided that the following conditions must be met as a prerequisite to the granting of such stay, to wit, the appraisal of the debtor's property and the setting aside of the debtor's unencumbered exemptions, and where the conditions were not met and the record shows no compliance with such conditions.

WHEREFORE, WILLIAM H. CLENDENEN prays that the Circuit Court of Appeals reverse the minute order herein and that the United States District Court for the Southern District of California, Northern Division, be ordered to enter a judgment or decree reversing the decision of said lower court herein.

OSBORN AND BURUM,

By R. Y. Burum

Attorneys for William H. Clendenen

(Endorsed) Assignment of Errors, Filed June 6, 1938. Paul P. O'Brien, Clerk.

[Endorsed]: Filed Jul. 2, 1938 at 10 A. M. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

At a Stated Term, to wit: The October Term A. D. 1937, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the thirteenth day of June in the year of our Lord one thousand nine hundred and thirty-eight.

PRESENT:

Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding.

Honorable WILLIAM DENMAN, Circuit Judge.

Honorable CLIFTON MATHEWS, Circuit Judge.

BAKERSFIELD ABSTRACT COM-)	
PANY, a Corporation,)	
)	
	)	Appellant,
)	
vs.)	
)	
JENNIE R. BUCKLEY,)	
)	
	)	Appellee.
)	
and	)	No. 8857
)	
WILLIAM H. CLENDENEN,)	
)	
	)	Appellant,
)	
vs.)	
)	
JENNIE R. BUCKLEY,)	
)	
	)	Appellee.

ORDER ALLOWING APPEALS.

Upon consideration of the petition of Bakersfield Abstract Company, a corporation, filed June 4, 1938, and

petition of William H. Clendenen, filed June 6, 1938, for allowance of appeals herein under section 24(b) of the Bankruptcy Act, and of the assignments of errors thereon filed therewith, and by direction of the court.

IT IS ORDERED that an appeal be allowed to each of said petitioners to the United States Circuit Court of Appeals for the Ninth Circuit, from the order of the District Court of the United States for the Southern District of California, Northern Division, made and entered on the 6th day of May, 1938, be, and the same hereby is allowed, conditioned upon the giving of a cost bond, covering both appeals, in the sum of Two Hundred and Fifty Dollars (\$250.00) with good and sufficient security within ten days from date.

IT IS FURTHER ORDERED that if an appeal has been heretofore allowed in this appeal to either party by said District Court, and a cost bond given on such appeal, then no additional cost bond need be given on this appeal.

[Endorsed]: Filed R. S. Zimmerman Clerk at 25 min. past 1 o'clock Jun. 15, 1938 P. M. By M. J. Sommer, Deputy Clerk.

Office of the Clerk
U. S. CIRCUIT COURT OF APPEALS
San Francisco, Calif.

June 18, 1938.

Messrs. Osborn & Burum,
Attorneys at Law,
506 Habermel Building,
Bakersfield, California.

No. 8857

In re: Jennie R. Buckley, etc.

Dear Sirs:

I have your favor dated the 17th instant, enclosing
Cashier's Check in the sum of \$250.00 in lieu of Surety
Bond for costs on appeal in above matter.

Very truly yours,

Paul P. O'Brien
Clerk.

O'B:E

[Endorsed]: Filed Jul. 2, 1938 at 10 A. M. R. S.
Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF CIRCUIT COURT OF APPEALS AND CAUSE.]

No. 8857

STIPULATION

IT IS HEREBY STIPULATED by and between Jennie R. Buckley, bankrupt, and W. R. Bergman and William S. Marks, her attorneys, and Bakersfield Abstract Company, a corporation, appellant, and Wm. H. B. Haymond, its attorney, and William H. Clendenen and Mamie L. Clendenen, appellants, and Messrs. Osborn & Burum, their attorneys, that the appeals heretofore allowed in the above entitled matter may be heard upon one transcript of record, and that said appellants need not cause to be prepared and filed separate transcripts of record in support of their respective appeals.

W. R. Bergman

William S. Marks

Attorneys for Jennie R. Buckley, Bankrupt.

Wm. H. B. Haymond

Wm. H. B. Haymond

Attorney for Bakersfield Abstract Company, a
corporation

OSBORN & BURUM

By R. Y. Burum

Attorneys for William H. Clendenen and
Mamie L. Clendenen

[TITLE OF CIRCUIT COURT OF APPEALS AND CAUSE.]

No. 8857

ORDER

Upon reading the foregoing stipulation it is hereby ordered that the appeals of the appellants Bakersfield Abstract Company, a corporation, and William H. Clendenen and Mamie L. Clendenen may be heard upon one transcript of record.

Francis A. Garrecht

United States Circuit Court Judge for the
Ninth Circuit.

(Endorsed) Filed June 22, 1938. Paul P. O'Brien,
Clerk.

[Endorsed]: Filed Jul. 2, 1938 at 10 A. M. R. S.
Zimmerman, Clerk, By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE.

TO THE CLERK OF SAID COURT:

SIR:

Please issue and transmit to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, as required by law under the rules of said Appellate Court, a transcript of record on appeal in the above entitled matter, to consist of authenticated copies of the following documents:

- (1) Adjudication order of referee, temporary restraining order;
- (2) Petition of Jennie R. Buckley, Bankrupt, for order to show cause;
- (3) Reporter's transcript of proceedings had before Referee upon the hearing of the order to show cause;
- (4) Order to show cause directed to William H. Clendenen and Bakersfield Abstract Company;
- (5) Affidavit of Bakersfield Abstract Company, in response to order to show cause;
- (6) Answer of Bakersfield Abstract Company to petition for order to show cause;
- (7) Petition of Bakersfield Abstract Company, a corporation for review of Referee's order;
- (8) Petition of William H. Clendenen for review of Referee's order;
- (9) Referee's certificate on review;
- (10) Minute order, dated May 6, 1938, confirming order of referee;

- (11) Petition of Bakersfield Abstract Company for leave to appeal under Bankruptcy Act;
- (12) Petition of William H. Clendenen and Mamie L. Clendenen, his wife, for leave to appeal under Bankruptcy Act;
- (13) Assignment of Errors filed on behalf of Bakersfield Abstract Company, a corporation;
- (14) Assignment of Errors filed on behalf of William H. Clendenen and Mamie L. Clendenen, his wife;
- (15) Order allowing appeals;
- (16) Citation on appeal issued upon allowance of appeal of Bakersfield Abstract Company, a corporation;
- (17) Citation on appeal issued on allowance of appeal of William H. Clendenen and Mamie L. Clendenen, his wife;
- (18) Stipulation and Order that appeals may be heard on one transcript;
- (19) This praecipe for transcript of the record on appeal and stipulation;
- (20) Cost bond on appeal;
- (21) Clerk's certificate.

DATED: June 1938.

Wm. H. B. Haymond

Wm. H. B. Haymond

Attorney for Bakersfield Abstract Company, a corporation, Appellant

OSBORN & BURUM

By Roy Burum

Attorney for William H. Clendenen and Mamie L. Clendenen, Appellants.

IT IS HEREBY STIPULATED by and between counsel for the appellants and the appellee, that the papers and documents set forth in the foregoing praecipe shall constitute the record on appeal, upon which said appeals may be heard and considered.

WILLIAM R. BERGMAN

WILLIAM S. MARKS

By Wm. R. Bergman

Attorneys for Jennie R. Buckley, Bankrupt,
Appellee.

OSBORN & BURUM

By Roy Burum

Attorneys for William H. Clendenen and Mamie
L. Clendenen, Appellants.

Wm. H. B. Haymond

Wm. H. B. Haymond

Attorney for Bakersfield Abstract Company, a
corporation, Appellant.

[Endorsed]: Filed Jul. 2, 1938 at 10 A. M. R. S.
Zimmerman, Clerk By Edmund L. Smith Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE

To the Clerk of Said Court:

Sir:

Please print 40 copies of transcript on appeal in the above entitled matter.

Wm. H. B. Haymond
Attorney for Bakersfield Abstract Company,
Appellant

[Endorsed]: Filed Jul 7 1938 4:40 p. m. R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF DISTRICT COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 76 pages, numbered from 1 to 76 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellants, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citations, adjudication, order of reference and temporary restraining order; petition for order to show cause; order to show cause; affidavit in response to order to show cause; answer to order to show cause and to petition for order to show cause; reporter's transcript on hearing of order to show cause; certificate of conciliation commissioner; petition of Bakersfield Abstract Company for review of referee's order; petition of William H. Clendenen for a review of referee's order; order of May 6, 1938; petition for appeal and assignment of errors of the Bakersfield Abstract Company; petition for appeal and assignment of errors of William H. Clendenen and Mamie L. Clendenen; order allowing appeals; stipulation and order; cash bond and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellants herein and a receipted bill is herewith enclosed, also that

the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....
and that said amount has been paid me by the appellants herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of July, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight and of our Independence the One Hundred and Sixty-third.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.